

FILED  
 UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

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 ) CR-N-04-30011  
 ) U.S. DISTRICT COURT  
 ) DISTRICT OF MASSACHUSETTS  
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UNITED STATES OF AMERICA,  
  
 Plaintiff,  
  
 vs.  
  
 JOSE GARCIA,  
  
 Defendant.

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE

The United States of America, through Michael J. Sullivan, United States Attorney for the District of Massachusetts, and William M. Welch II, Assistant United States Attorney, hereby responds to defendant Garcia's Motion in Limine as follows:

Crawford v. Washington, 541 U.S. 36 (2004) does not apply to present case. The principle enunciated in Crawford applies only to criminal prosecutions. Revocation hearings are not criminal prosecutions, and the full protections of the Sixth Amendment do not extend to revocation hearings. Morrissey v. Brewer, 408 U.S. 471, 480 (1972); Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973). Therefore, the Sixth Amendment right to confrontation discussed in Crawford does not apply to supervised release proceedings. United States v. Hall, 419 F.3d 980 (9<sup>th</sup> Cir. 2005). See also United States v. Aspinall, 389 F.3d 332, 342 (2d Cir. 2004) (holding that Crawford does not apply to probation revocation because Crawford

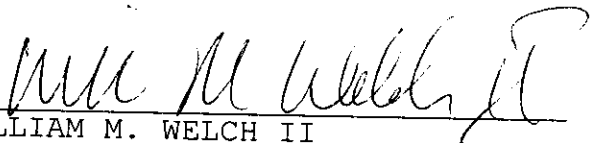
and the Sixth Amendment apply only to "criminal prosecutions", and probation revocations are not criminal prosecutions); United States v. Martin, 382 F.3d 840, 844 n. 4 (8th Cir. 2004) (holding that the confrontation right in criminal prosecutions does not apply to supervised release revocations because they are not criminal prosecutions).

Filed this 15<sup>th</sup> day of September, 2005.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

By:

  
WILLIAM M. WELCH II  
Assistant United States Attorney

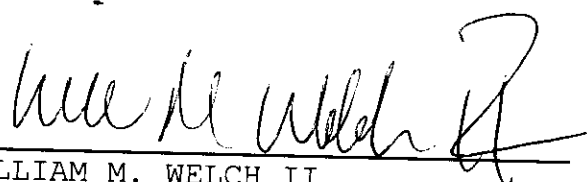
CERTIFICATE OF SERVICE

Hampden, ss.

Springfield, Massachusetts  
September 15, 2005

I, William M. Welch, Assistant U.S. Attorney, do hereby  
certify that I have served a copy of the foregoing by faxing said  
motion to:

Joseph A. Frank, Esq.  
51 Park Avenue  
Suite 7  
West Springfield, MA 01089

  
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WILLIAM M. WELCH II  
Assistant United States Attorney